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February 26, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77, and 98-166

Dear Ms. Salas:

On behalf of the Competitive Universal Service Coalition ("CUSC"), I am submitting CUSC's Comments on the MAG plan. These Comments are filed in response to the Notice of Proposed Rulemaking in the above-referenced proceedings, FCC 00-448, released Jan. 5, 2001.

If you have any questions, please contact me.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for the Competitive Universal Service Coalition

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

COMMENTS OF THE COMPETITIVE UNIVERSAL SERVICE COALITION

COMPETITIVE UNIVERSAL SERVICE COALITION

Association for Local Telecommunications Services
AT&T Wireless Services
Competitive Telecommunications Association
Nucentrix Broadband Networks, Inc.
Personal Communications Industry Association
Smith Bagley, Inc.
U.S. Cellular Corporation
Verizon Wireless
VoiceStream Wireless Corporation
Western Wireless Corporation
Wireless Communications Association

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Its Attorneys

February 26, 2001

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EXECUTIVE SUMMARY

The Commission's efforts to reform the rural incumbent local exchange carriers' ("ILECs") access charge and universal service rules should be guided by three principles: (1) *competitive neutrality*, which requires that all funding be explicit and portable; (2) *economic efficiency*, which requires that explicit funding be limited to that necessary to preserve universal service; and (3) *transparency*, which enables ILECs and prospective entrants to make business plans in the context of a stable regulatory system that is not excessively complex. CUSC believes that at least two elements of the MAG plan are fully consistent with these principles: (1) the proposed increase in the rural ILECs' subscriber line charges ("SLCs"); and (2) the proposal that all explicit funding be portable and available to all eligible telecommunications carriers ("ETCs"), including competitive ETCs as well as ILECs.

On the other hand, most of the MAG proposals fail to satisfy these criteria, and also fall into a number of policy pitfalls that the Commission should avoid. Specifically, CUSC submits that the Commission should *not*: (1) give the rural ILECs *revenue guarantees*, which are neither legally guaranteed nor desirable as a public policy matter; (2) give the rural ILECs *opportunities to "game" the regulatory process*, with excessively broad discretion to select options that could bloat the total size of the fund and potentially disadvantage competitive entrants; and (3) impose unnecessary and inappropriate *regulation on non-dominant carriers*.

In particular, the interstate access-related fund that MAG proposes to create – the so-called Rate Averaging Support ("RAS") fund – must be designed to recover only the amount necessary to maintain universal service, and should not guarantee the rural ILECs' revenue levels. In addition, to ensure competitive neutrality, rural ILECs must not be allowed to "opt out" of eliminating implicit support by selecting "Path B." Rather, funding to *all* rural ILECs must be explicit and portable to competitive entrants.

With respect to the MAG access charge reform proposals, the Commission should adopt the proposal to increase the rural ILECs' SLCs, and should move rural ILECs' carrier access charges toward a more cost-oriented level. The Commission should determine the appropriate level of rural ILECs' carrier access charges based on cost justification, including a re-initialized rate of return. CUSC also supports incentive regulation for rural ILECs, but believes that such regulation must be mandatory, not optional, and should not contain a "low end adjustment," which creates an improper revenue guarantee.

The MAG plan conflicts with a number of the recommendations of the Rural Task Force ("RTF") of the Federal-State Joint Board on Universal Service. On each of these issues, CUSC urges the Commission to adopt the RTF's consensus approach, which is far superior to the MAG counter-proposal.

Finally, the Commission should reject the MAG proposals to impose new regulations on non-dominant interexchange carriers ("IXCs").

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMENTS OF THE
COMPETITIVE UNIVERSAL SERVICE COALITION

The Competitive Universal Service Coalition ("CUSC") hereby submits its comments on the Notice in the above-captioned proceedings. 1/ CUSC agrees with elements of the plan that would replace certain implicit subsidies with explicit and portable funding, but is concerned that much of the plan would lead to excessive increases in the size of the fund, undermine competitive neutrality, and give rural incumbent local exchange carriers ("ILECs") excessive opportunities to

1/ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, and 98-166, Notice of Proposed Rulemaking, FCC 00-448 (released Jan. 5, 2001) ("*MAG NPRM*").

manipulate the regulatory system to benefit themselves and to disadvantage their consumers and competitors.

CUSC includes competitive local exchange carriers ("CLECs"), commercial mobile radio service ("CMRS") providers, and other competitive carriers that provide, or may consider providing, local service in high-cost and rural areas. Accordingly, the members of CUSC have a vital interest in ensuring that high-cost universal service funds are available on an equal basis to competitive entrants as well as incumbent local exchange carriers ("ILECs"). To be competitively neutral, all funding must be explicit and portable, and must be available in a transparent manner to facilitate business planning by prospective competitive entrants. CUSC also believes that the funding system must be as efficient as possible to protect consumers and carriers around the country from excessive contribution burdens. Such funds should be limited to the amount necessary to preserve universal service.

CUSC appreciates the efforts of the ILEC associations that prepared the LEC Multi-Association Group ("MAG") plan, and supports certain elements of the plan. Specifically, as discussed below, CUSC supports the proposed increase in the rural ILECs' subscriber line charges ("SLCs") and the proposal that all explicit funding would be portable and available to all eligible telecommunications carriers ("ETCs"), including competitive ETCs as well as ILECs. However, CUSC is concerned that much of the plan would undermine the competitive neutrality of the funding structure, and would result in an excessively large fund.

In these comments, CUSC first submits an overview of general principles that should guide reform of the Commission's access charge and universal service rules for rural telephone companies, as well as pitfalls to be avoided. Second, CUSC addresses the so-called Rate Averaging Support ("RAS") fund, the new interstate access-related universal service fund that MAG proposes to create (also sometimes referred to as "High-Cost Fund III" or "HCF III"). CUSC shows that any such fund must be limited to the amount necessary to maintain universal service, and that to ensure competitive neutrality, rural ILECs must not be allowed to "opt out" of eliminating implicit support, but must make any and all funding explicit. Third, CUSC suggests modifications to the MAG access charge reform proposals that would make the system more competitively neutral by ensuring that all implicit subsidies are eliminated. Fourth, CUSC shows that, in every instance in which the MAG plan conflicts with the recommendations of the Federal-State Joint Board on Universal Service's Rural Task Force ("RTF"), 2/ the RTF's consensus approach is superior to the MAG proposal. Finally, CUSC opposes the MAG proposals to impose new regulations on interexchange carriers ("IXCs"), which (unlike MAG's rural ILEC constituents) are non-dominant carriers.

2/ *Federal-State Joint Board on Universal Service,* Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 01-8 (released Jan. 12, 2001) ("RTF FNPRM"), seeking comment on Recommended Decision, CC Docket No. 96-45, FCC 00J-4 (Joint Board, released Dec. 22, 2000); *see also* Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (adopted Sept. 22, 2000) ("*RTF Recommendation*").

I. OVERVIEW: PUBLIC INTEREST GOALS SHOULD GUIDE RURAL UNIVERSAL SERVICE AND ACCESS REFORM

The Commission has already articulated the public interest objectives, rooted in the Telecommunications Act of 1996, that have guided its universal service and access charge reform efforts to date. 3/ CUSC submits that these objectives must continue to guide the Commission's current efforts. In particular, the Commission's universal service and access reform agenda must be guided by the goals of (1) competitive neutrality, (2) efficiency, and (3) transparency.

1. *Competitive Neutrality*. Competition is no less important a goal for rural telephone companies' service areas than for other parts of the country. 4/ To ensure that the high-cost universal service funding rules are consistent with and facilitate the emergence of competition, all funds must be equally available to all ETCs – competitive entrants as well as ILECs. Moreover, funds should be

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3/ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶¶ 44-55 (1997) ("*Universal Service First Report and Order*"), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. granted* (on other grounds), 120 S.Ct. 2214 (2000); *Access Charge Reform*, First Report & Order, 12 FCC Rcd 15982, ¶¶ 28-35 (1997), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC,* 153 F.3d 523 (8th Cir. 1998).

4/ *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 8801, 8932-34; *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report & Order, WT Docket No. 99-217, ¶ 30 (rel. Oct. 25, 2000); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, FCC 00-326, ¶ 27 (rel. Aug. 24, 2000); *Western Wireless Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion & Order, CC Docket No. 96-45, DA 00-2896, ¶ 11 (Com. Car. Bur., rel. Dec. 26, 2000); *Access Charge Reform*, Order, CC Docket No. 96-262, DA 00-2132, ¶ 14 (Com. Car. Bur., rel. Sept. 20, 2000); *Cellco Partnership Petition for Designation as an Eligible Telecommunications Carrier in Delaware*, Memorandum Opinion & Order, CC Docket No. 96-45, DA 00-2895, ¶ 8 (Com. Car. Bur., rel. Dec. 26, 2000).

disbursed regardless of the technology that the carrier uses to provide supported services (*e.g.*, wireline or wireless). To achieve these goals, the Commission should eliminate implicit subsidies embedded in ILEC rate structures, which are available only to ILECs and not to competitors. Any and all remaining universal service support must be explicit and portable.

2. *Efficiency*. The access charge and universal service regimes must be as economically efficient as possible, to maximize economic growth and consumer benefits in the telecommunications sector and throughout the economy. Toward this end, rates should be cost-oriented. To protect telecommunications consumers and carriers across the country from excessive contribution burdens, explicit universal service funding must be limited to the amount necessary to preserve and maintain universal service.

3. *Transparency*. To ensure a stable regulatory system that facilitates business planning by ILECs, new entrants, IXCs, and consumers, the system must be transparent – *i.e.*, excessive complexity should be avoided, and rates and support funding amounts should be as predictable as possible. In particular, to ensure that all universal service funding is "specific" and "predictable," as required by Section 254 of the Communications Act of 1934, as amended ("Act"), 5/ publicly available information must clearly identify the amounts of funding that are available in each geographic area.

5/ 47 U.S.C. § 254(b)(5) & (d).

CUSC submits that the Commission should also be careful to avoid certain pitfalls that would undermine these policy goals.

1. *No Revenue Guarantees*. In an increasingly competitive environment, neither rural ILECs nor any other carriers should be protected by regulatory mechanisms that assure recovery of any specific amounts of revenue or investments. Assuring revenue neutrality to the rural ILECs is neither legally required nor desirable as a public policy matter.

2. *No Opportunities to "Game" the Regulatory Process*. Rural ILECs, which dominate their respective local markets, should not get broad options regarding how they will be regulated. Giving these monopolists such choices would enable them to engage in regulatory gamesmanship that could interfere with competition and harm consumers. To the extent that variation among rural ILECs means that "one size does not fit all," regulators – not the ILECs themselves – should determine what regulatory system is appropriate for specific categories of carriers.

3. *No Regulation of Non-Dominant Carriers*. There is no basis for imposing regulatory requirements on carriers such as IXCs or competitive ETCs, which have no ability to dominate their respective markets. Some rural ILECs argue for regulatory parity between themselves and competitive entrants, but such treatment would be improper given the lack of market parity. Rather than seeking to have inappropriate regulation imposed on competitive entrants as a means of

preserving control over local markets, rural ILECs should embrace competition, which ultimately will reduce the need to regulate them.

The Commission should evaluate MAG's specific universal service and access reform proposals in light of the guiding principles set forth above.

II. ANY NEW FUND MUST BE PORTABLE, TRANSPARENT AND LIMITED TO AMOUNTS NEEDED FOR UNIVERSAL SERVICE

CUSC supports MAG's proposal to create a new, explicit fund to collect and distribute, in a competitively neutral manner, any interstate access-related support needed in the areas served by rural ILECs. In particular, CUSC strongly agrees with MAG's proposal that the so-called RAS fund be portable and that the same amount per line be available to competitive ETCs as well as ILECs. 6/ (Indeed, a non-portable, non-competitively neutral fund would violate the Act and would contravene established Commission precedents.) 7/ On the other hand, as discussed below, CUSC disagrees with the MAG proposals regarding (1) the size of the RAS fund, and (2) rural ILECs' ability to "opt out" or decide not to participate, or to delay participating, in this explicit funding structure.

6/ CUSC submits that "Rate Averaging Support" is an inappropriate name for this fund, since only interexchange carriers (not rural ILECs) are required to engage in "rate averaging," and the proposed RAS fund does not support such averaging. If the Commission desires to retain the "RAS" acronym, CUSC suggests calling the fund something like "Rural Access-related Support."

7/ *See, e.g., Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934,* Memorandum Opinion & Order, 15 FCC Rcd 16227 (2000).

A. **The New Explicit Fund Must Recover Only Amounts Necessary To Maintain Universal Service**

The RAS fund, as proposed in the MAG plan, would be excessively large, and would impose undue contribution burdens on telecommunications carriers and consumers around the country. In particular, CUSC opposes the MAG proposal to establish the RAS fund based on the difference between rural ILECs' current interstate access revenues and rural ILECs' access revenues after lowering carrier access rates and increasing SLCs – in effect, guaranteeing the rural ILECs no net change in overall interstate revenue levels.

The RAS fund, supported through all carriers' universal service contributions, should not work as an insurance policy to guarantee that rural ILECs meet their targeted rates of return. Rather, this fund should be designed to recover an amount commensurate to the need for universal service funding in the rural ILECs' areas. For example, one possible methodology for establishing such a fund could be to base it on the expected difference between the rural ILECs' SLC revenues and the portion of the embedded cost of local loops and ports allocated to the federal jurisdiction. 8/ The Act provides for universal service support that is

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8/ This is roughly equivalent to the methodology that AT&T used to develop an estimate justifying the $650 million interstate access universal service support mechanism adopted in the CALLS plan for price cap carriers. *See Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 1679, ¶¶ 198-205 (1999); in particular, *see id.* at ¶ 200 & n.439. Such a methodology would be computed on an annualized basis over the five-year period that the MAG plan is in effect.

"sufficient" to meet universal service needs 9/ – not to guarantee a particular group of carriers a particular rate of return, especially when competitors of this particular group of carriers receive no such guarantee. Rather than using money from universal service contributors to ensure that rural ILECs meet their targeted rate of return, rural ILECs should look primarily to their own end-user ratepayers for recovery of their costs, including any return on investment that they can reasonably earn.

CUSC also disagrees with the MAG proposal not to impose a cap on the RAS fund. The overall size and/or the rate of growth of the RAS fund should be subject to caps, similar to the $650 million cap on the interstate access universal service fund established in the CALLS plan for larger ILECs, as well as the existing cap on the growth of the High Cost Loop fund that rural ILECs receive, which the RTF recommends retaining. 10/ CUSC submits that three types of caps could be applied to RAS funding: (1) per-line caps, (2) per-carrier caps, and (3) a national cap. First, the per-line amount of RAS funding in any individual rural ILEC study area should not increase after the first year of funding. Second, the total amount of funding any individual rural ILEC receives should be limited to ensure that the funding does not increase the carrier's rate of return or its total amount of interstate revenues (adjusted to account for inflation and growth in lines). Finally,

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9/ 47 U.S.C. § 254(b)(5).

10/ *RTF Recommendation* at 23-29.

the national RAS fund should be limited by a flat dollar amount of funding. Without caps, the fund could grow by an unpredictable rate. Thus, such caps on the amount and growth of funding are needed to ensure that the high-cost funding system complies with the statutory mandates that funding be "specific" and "predictable." 11/

Finally, contrary to the MAG plan, any new fund created to provide interstate access-related support (*i.e.*, support for interstate-allocated costs that are not recovered through access charges) should replace the existing LTS fund, which has an identical purpose. The Commission should not retain the LTS fund while creating a RAS fund, because permitting both funds to co-exist would result in unjustified double recovery. At a minimum, any carrier receiving RAS funding should be required to forego LTS funding. Moreover, neither the RAS fund nor any other universal service mechanism should be used to subsidize rural ILECs' special access rates.

B. All Rural ILECs Must Participate In The New Explicit Fund

Rural ILECs should not be permitted to "opt out" of competitive neutrality. But that is what the MAG plan's unsupportable "Path B" would allow rural ILECs to do. Under "Path B," rural ILECs would continue to receive implicit, non-portable support as they do today, and would be exempt from the requirement to eliminate implicit support and receive all universal service support through an

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11/ 47 U.S.C. § 254(b)(5).

explicit, portable mechanism (*i.e.*, the RAS fund). The MAG plan does not provide a significant incentive for carriers to select Path A rather than Path B. 12/ Moreover, the plan provides absolutely no guidance regarding which rural ILECs may or may not opt for Path B (*e.g.*, there is no provision limiting Path B to the tiniest carriers). Thus, rural ILECs would be free to decline to convert their implicit subsidies into explicit, portable, and competitively neutral funding. This anti-competitive result would be unsupportable under the Act.

Not only does Path B severely undermine competitive neutrality, it also makes the funding system non-transparent and unpredictable by giving rural ILECs unfettered control of the timing of when (if at all) their study areas come under Path A regulation, and therefore expose to competition the implicit support they receive through access charges. The MAG plan gives rural ILECs total flexibility to decide when, during the course of the five years of the MAG plan, each of their multiple study areas would become subject to Path A rather than Path B (and whether and when each of them will emerge from the NECA access charge pools). This extreme and unsupported degree of discretion would mean that the regulatory structure governing the universal service support available in any given geographic location (as well as the ILECs' access charge levels) would be changeable

12/ The availability of incentive regulation under Path A may not be a significant incentive to attract carriers to abandon the security of Path B's guaranteed return on investment (and anti-competitive retention of implicit, rather than explicit, funding). This is especially true given that rural ILECs have had the option of selecting other forms of incentive regulation – price cap regulation, as well as the form of incentive regulation contained in 47 C.F.R. § 61.39 – for over a decade, and virtually none of them has done so.

year by year and would be completely subject to the arbitrary whims of the serving rural ILEC. As a result, it would be practically impossible for any prospective competitive ETC to account for the incumbent's support in making its business plans.

Finally, rural ILECs would be able to exploit the discretion built into the MAG plan to substantially increase the total amount of funding. A rural ILEC could be expected to select the combination of regulatory mechanisms – Path A or Path B, and pooling or non-pooling – that would maximize its revenues. All of the rural ILECs could be expected to manipulate such a system in a way that, collectively, would increase the overall magnitude of the fund. Again, this result would violate the statutory command that universal service funding be "specific" and "predictable." 13/

CUSC submits that the Commission should establish a single regulatory system, modeled on MAG's Path A (with the important modifications discussed herein), that would ensure that all rural ILECs move away from rate of return guarantees and toward an incentive mode of regulation that is more compatible with the advent of competition. More importantly, such an approach would provide for a regulatory model that is transparent to consumers and competitors, and a stable, predictable, and competitively neutral universal service funding system. In the alternative, if the Commission decides to create multiple

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13/ *Id.*

regulatory systems to accommodate the variation among rural ILECs, *the Commission* should determine what categories of carriers should be subject to which forms of regulation, keeping in mind that all rural ILECs possess market power, regardless of their size. 14/ Given the rural ILECs' continuing monopoly power and dominant carrier status, it is not appropriate to delegate such decisions to the rural ILECs themselves.

III. IMPLICIT SUBSIDIES MUST BE ELIMINATED FROM RURAL ILECS' ACCESS CHARGES

To make the universal service system truly competitively neutral, all implicit subsidies must be eliminated from ILECs' rate structures. Thus, the rural ILECs' SLCs and carrier access rates must move toward cost. This would ensure that those rates are neither artificially low (giving ILEC customers the benefit of implicit subsidies that are not available to customers of competitive carriers), nor artificially high (thus collecting implicit subsidies in a manner that is only available to ILECs). For these reasons, CUSC generally supports the MAG proposals regarding changes to the SLC and carrier access rate levels, with important qualifications discussed below. On the other hand, CUSC has serious reservations

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14/ MAG proposes different forms of incentive regulation for rural ILECs with greater than five study areas and for those with five or fewer study areas. But some study areas are quite large and some are quite small, and study areas have their present configurations due to arbitrary factors such as historical quirks of when and how rural ILECs acquired service territory. Thus, CUSC submits that it makes no sense to categorize carriers based on the number of study areas that they serve.

about the form of incentive regulation proposed by MAG, and opposes MAG's proposal to "freeze" the regulated rate of return at 11.25 percent.

A. The Commission Should Move the Rural ILECs' SLCs and Carrier Access Rates Toward Cost

CUSC supports the MAG proposal to eliminate one of the most significant forms of implicit subsidies from the rural ILECs' rate structures – maintenance of the SLC at an artificially low level. The MAG plan would advance economic efficiency and competitive neutrality by recovering a greater proportion of non-traffic sensitive loop costs from the cost-causers – *i.e.,* end-users. CUSC agrees that rural ILECs' SLCs should be allowed to increase to the same levels as those of the larger ILECs, and that the Lifeline program should be modified accordingly to give low-income end-users increased support.

CUSC also generally supports the MAG plan's proposal to move carrier access rates to a more cost-oriented level. We note, however, that the MAG proponents offer absolutely no cost support for the proposed new carrier access rate levels. As dominant carriers with virtual monopoly control over their local markets, the ILECs should be required to provide some degree of cost-justification, particularly for a plan that (unlike the CALLS plan) had no participation from IXCs, let alone other competitive carriers. Just as the rural ILECs' SLCs need to be increased in a cost-oriented direction, their carrier access charges need to move to cost-justified levels in order to ensure that those rates do not contain implicit subsidies that are unavailable to competitive carriers. Thus, we urge the

Commission to satisfy itself that the rural ILECs' carrier access rate levels are justified based on cost.

In that regard, given that the established interstate rate of return is likely to be an important benchmark for some time to come, CUSC submits that the existing proceeding to review and re-initialize that rate of return should be allowed to proceed to a conclusion based on the record. MAG's proposal to "freeze" the rate of return at the 11.25 percent level, which by now is certainly out of date, is simply another unsupported request for revenue guarantees. It is quite possible that the appropriate rate of return for rural ILECs is significantly lower than 11.25 percent. If so, both carrier access rates and any new explicit universal service fund (*i.e.*, the RAS fund) could be correspondingly smaller, to the benefit of interstate access customers and contributing telecommunications consumers across the nation.

B. The Commission Should Modify the Form of Incentive Regulation in the MAG Plan to Eliminate Revenue Guarantees

The advent of competition requires that rural ILECs shift toward incentive regulation, and away from rate of return regulation (which assures that they recover every dollar they invest, plus a guaranteed rate of return). CUSC agrees that the rural ILECs should be subject to incentive regulation. However, CUSC has serious reservations about certain aspects of the form of incentive regulation proposed by MAG.

First, incentive regulation should be mandatory, not optional, and should be phased in throughout the rural ILEC community on a uniform schedule.

Rural ILECs should not be permitted to continue the anti-competitive status quo indefinitely by opting for Path B, as discussed above. 15/

Second, incentive regulation should not contain a "low-end adjustment," which creates an asymmetry in which rural ILECs receive an unlimited "upside" opportunity to increase their earnings but are artificially protected from a "downside." As with the larger ILECs' price cap system, the low end adjustment should be eliminated: in an increasingly competitive environment, no carrier should be guaranteed any amount of revenue or return on investment. At a minimum, any permitted low-end adjustment should kick in somewhere lower than the minuscule 50-to-100 basis point margin proposed by MAG.

Third, unless rural ILECs make a demonstration, comparable to that required for larger ILECs, that competition has developed to a sufficient extent within their areas, 16/ none of their access rates should be deregulated. In particular, CUSC objects to the MAG proposal that rural ILECs be permitted to introduce new access services at "market rates."

15/ *See supra* § II.B.

16/ *Cf. Access Charge Reform*, Fifth Report & Order, 14 FCC Rcd 14221 (1999), *aff'd sub nom. WorldCom, Inc. v. FCC*, No. 99-1395 (D.C. Cir. Feb. 2, 2001).

IV. THE COMMISSION SHOULD REJECT THE MAG PROPOSALS TO SUPERSEDE MANY OF THE RURAL TASK FORCE'S RECOMMENDATIONS.

Although they give lip service to the benefits of the RTF recommendations, MAG and its members offer a number of proposals that directly contradict the RTF recommendations. In each case, the RTF's recommended approach would better serve the public interest than the conflicting MAG proposal. 17/ The conflicting MAG proposals seriously undermine the consensus RTF process, and should be rejected.

Moreover, considering these issues in the instant proceeding would violate the procedural requirements of Section 254, which contemplates that the Commission will decide on universal service policy matters based on the recommended decisions of a Joint Board. The RTF is a creature of the Joint Board, and the Joint Board considered, and recommended adoption of, the RTF recommendations. By contrast, the NPRM in the instant proceeding was produced solely by the Commission. The Commission has consistently maintained its sole authority to render decisions on interstate access reform matters, including matters involving the universal service support embedded in access rates and explicit funding alternatives (such as the fund adopted in the CALLS proceeding and the RAS fund under review here). CUSC does not dispute that the RAS fund and access

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17/ The RTF recommendations represented the culmination of a negotiated consensus process among representatives of many divergent industry sectors, as well as state regulators and consumer advocates. By contrast, MAG exclusively represents rural ILECs.

charge rate levels are within the exclusive purview of the FCC. But the specific universal service matters addressed by the RTF recommendations, such as those involving the High Cost Loop fund, must go through the Joint Board. The MAG proposals on these issues fail this procedural requirement.

CUSC, in its comments on the RTF recommendation, has already addressed many of the RTF proposals that are challenged by the MAG plan. We refer the Commission to our comments in the RTF proceeding for a complete discussion of our substantive views on these matters. 18/ Here we briefly summarize those views:

1. *RTF Recommends Retaining Caps on the High Cost Fund; MAG Proposes Eliminating Them*. 19/ The Commission should adopt the RTF recommendation. 20/ Unrestricted growth in high-cost funding levels would place excessive burdens on the telecommunications consumers around the country who ultimately pay for this program, and could threaten the stability of the overall universal service regime. Therefore, the Commission should adopt the RTF's

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18/ *See* Reply Comments of the Competitive Universal Service Coalition, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45 (filed Nov. 30, 2000; corrected version attached to letter dated Dec. 11, 2000) ("*CUSC RTF Reply Comments*"); Further Comments of the Competitive Universal Service Coalition, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45 (filed Feb. 26, 2001).

19/ *RTF Recommendation* at 23-29; *Petition for Rulemaking of the LEC Multi-Association Group (MAG),* RM No. 10011 (filed Oct. 20, 2000) ("*MAG Plan*") at 16 & Exh. 1 at 1-16.

20/ CUSC has suggested some minor alterations to the RTF's proposals in this regard. *See, e.g., CUSC RTF Reply Comments* at 21-24.

recommendations: making adjustments that would effectively result in a one-time increase in the fund of about 15%, 21/ but retaining a reasonable formula to constrain the total amount of future funding growth. The Commission should disregard the MAG proposal to eliminate reasonable constraints on future fund growth.

2. *RTF Recommends Retaining Section 54.305, With Minor Adjustments; MAG Proposes Eliminating That Rule*. 22/ Again, the Commission should adopt the RTF plan. In the context of sales of exchanges or study areas from one ILEC to another, RTF correctly recommends that (1) mere transfer of ownership should not result in increased support; (2) the potential availability of additional support should not artificially inflate the price of sale/transfer transactions; (3) additional support should be available only for post-transaction investment; and (4) such support should be capped. By contrast, MAG's proposal to eliminate this rule would do nothing to create an incentive for economically efficient investment in rural areas. Rather, eliminating Section 54.305 would create enormous uneconomic incentives for large, potentially more efficient carriers to sell exchanges to smaller, less efficient carriers, and would lead to substantial increases in the overall amount of universal service funding.

21/ *Ex parte* letter from William R. Gillis, Chair, RTF, to Magalie Roman Salas, FCC, CC Docket No. 96-45, filed Nov. 10, 2000, attachment at 1.

22/ *RTF Recommendation* at 29; *MAG NPRM* at ¶ 12 n.26 (citing Letter of William F. Maher, Jr., counsel for MAG, to Magalie Roman Salas, FCC, dated Nov. 21, 2000).

3. *RTF Recommends Permitting Rural ILECs to Disaggregate Their Study Areas Down to Two Zones Per Wire Center; MAG Proposes To Allow Three Zones Per Wire Center*. 23/ CUSC believes that even the RTF proposal would give ILECs excessive flexibility, and that the MAG plan far worse and should be rejected. To be sure, CUSC supports disaggregating and accurately targeting support, for both funding and ETC purposes, because those measures eliminate artificial barriers to competitive entry in the highest-cost areas and avoid creating artificial entry incentives in relatively low-cost portions of rural telephone companies' study areas. But if an incumbent could control how funding is distributed within a study area, absent sufficient regulatory oversight the incumbent could direct an excessive amount of funding to those portions of the study areas where the competitive ETC is unable to provide service.

In particular, without regulatory oversight over the specific boundaries of zones below the wire center level, the ILECs would be able to establish multiple funding zones with indeterminate boundaries about which no competitive carrier could obtain complete information, let alone compete against. 24/ This would make for a non-transparent system and might lead to unjustified increases in the overall level of funding. Instead, CUSC suggests that support must be disaggregated based

23/ *RTF Recommendation* at 33-35; *MAG Plan*, Exh. 1 at 1-20 to 1-21.

24/ *Cf. RTF Recommendation* at 36-37 (need for greater transparency). It is already virtually impossible for competitors to obtain information about non-rural ILECs' "UNE Zone" boundaries used for distributing Interstate Access-Related Support pursuant to the CALLS plan. CUSC understands that USAC is in the process of remedying this problem.

on geographic zones no smaller than wire centers, except in cases where a state commission has made a prior determination that a different level of disaggregation is appropriate. Rural ILECs or competitive ETCs proposing that support be disaggregated below the wire center level should be required to submit their disaggregation plans for approval by the state commission.

V. THE COMMISSION SHOULD NOT IMPOSE NEW REQUIREMENTS ON NON-DOMINANT CARRIERS

CUSC strongly objects to the MAG proposals to impose new regulations on IXCs, including requirements to comply with new geographic averaging rules, reduce long distance rates, and eliminate monthly minimum charges. These proposals defy twenty years of Federal Communications Commission precedents declining to impose such regulations upon non-dominant carriers. 25/ Instead, IXCs, as well as competitive ETCs and other non-dominant carriers, should be free to design innovative packages of services, including combined local and long distance service packages (which may include monthly minimums) targeted to rural communities. Rather than seeking to impose regulatory restrictions on competitive carriers' ability to compete, the rural ILECs should be forced open their own local markets to greater competition.

25/ *See, e.g., Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1 (1980); *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995).

CONCLUSION

For the foregoing reasons, CUSC submits that the Commission should adopt certain aspects of the MAG plan discussed above, and otherwise reject the plan, which would unreasonably expand the amount of funding going to rural ILECs and could interfere with the development of local competition.

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Western Wireless Corporation
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February 26, 2001

CERTIFICATE OF SERVICE

I, Cecelia Burnett, hereby certify that on this 26th day of February, 2001, a copy of the foregoing "Comments of the Competitive Universal Service Coalition" were delivered by first class mail, unless otherwise indicated, to the following parties:

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